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STATE OF CALIFORNIA

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:	}	ADMINISTRATIVE COMPLAINT
GILTON SOLID WASTE MANAGEMENT, INC.		FOR WASTE TIRE HAULER
		ADMINISTRATIVE PENALTIES
TPID NO: 1001979-01		PUBLIC RESOURCES CODE
RESPONDENT.	}	SECTION 42950, ET SEQ.
		AGENCY NO: 2013-011148-ADC

INTRODUCTION

This Administrative Complaint For Waste Tire Hauler Administrative Penalties is issued by the California Department of Resources Recycling and Recovery (CALRECYCLE) to Gilton Solid Waste Management, Inc. (RESPONDENT) seeking \$142,500.00.

The California Integrated Waste Management Board (CIWMB or also referred to as, the "Board") is now the California Department of Resources Recycling and Recovery (CALRECYCLE). CALRECYCLE succeeded to CIWMB's authority on January 1, 2010, pursuant to Public Resources Code (PRC) section 40401(a)(1). Pursuant to PRC section 42851(a), CALRECYCLE is authorized to issue an administrative accusation to a person on whom civil liability may be imposed. This Administrative Complaint is so issued based on the following facts.

STATEMENT OF FACTS

1. CALRECYCLE has authority to regulate and conduct enforcement actions regarding Waste Tire Facilities and Waste and Used Tire Haulers within the State of California under PRC sections 42800 et seq., 42950 et seq., and attendant regulations contained in Title 14 of the California Code of Regulations (CCR).

2. RESPONDENT has been a registered waste and used tire hauler since December 16, 1997. RESPONDENT's current waste and used tire hauler registration expires on December 31, 2013.

3. RESPONDENT operates a solid waste facility, Gilton Solid Waste Management, Inc., Tire Program Identification (TPID) number 1001979, located at 800 South McClure Road, Modesto, California 95357. RESPONDENT's agent for service of process is Richard Gilton, Gilton Solid Waste Management, Inc., 755 S. Yosemite Avenue, Oakdale, California 95361.

4. RESPONDENT was provided instruction regarding the proper completion, retention, and delivery of California Uniform Waste and Used Tire Manifests, also known as Comprehensive Trip Log (CTL) forms or "manifest forms," at the time of RESPONDENT's initial hauler registration and annually during the hauler registration renewal process.

5. At the time of RESPONDENT's initial registration and annually during the hauler registration renewal process, RESPONDENT was sent a hauler package containing: (1) instructions on transporting waste/used tires; (2) a complete list of hauler and manifesting regulations (Title 14, California Code of Regulations, Chapter 6); and (3) a training compact disc (CD) on the proper storage and transportation of waste/used tires. RESPONDENT was also sent a Comprehensive Trip Log (CTL) Guidance Manual, explaining in detail how to properly complete the CTL form, including the requirement to manifest (document on the CTL form) all waste and used tire pickups and deliveries. In addition, numerous hauler alerts and advisories were sent to RESPONDENT informing RESPONDENT of the zero tolerance policy applicable to late renewals, improper manifesting using an incorrect TPID, and transporting waste tires to unauthorized locations.

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1 6. On December 10, 2012, Inspector Troy Weber of CalRecycle's Solid Waste
2 Enforcement Section inspected Gilton Solid Waste Management, Inc., located at 800 South
3 McClure Road, Modesto, California 95357 (hereafter, referred to as "the facility"). As
4 documented in SWIS Inspection Report No. 50-AA-0012, dated December 10, 2012, the
5 facility was storing approximately 35,000 waste tires at the facility, and therefore, currently
6 operating as a Major Waste Tire Facility.¹

7 7. On January 4, 2013, CALRECYCLE issued a letter to Dennis Schuler,
8 Environmental Affairs Manager for RESPONDENT. The letter informed RESPONDENT that
9 the facility was in violation of PRC Section 42824 and Title 14 CCR section 18420(a) because
10 it was operating as a Major Waste Tire Facility without having obtained a Major Waste Tire
11 Facility permit. RESPONDENT was notified that it was "greatly exceeding" the 150-tires-per-
12 day annual limit set forth in PRC section 42808, and thus, was required to possess a separate
13 valid Waste Tire Facility permit. RESPONDENT was provided 30 days to bring the facility into
14 compliance by reducing the number of tires received to less than 150-tires-per-day averaged
15 on an annual basis, and was provided notice that failure to bring the facility into compliance
16 within 30 days would subject RESPONDENT to CALRECYCLE taking direct enforcement
17 action. This letter also specifically informed RESPONDENT that manifesting violations had
18 occurred because RESPONDENT had not properly manifested all tires arriving or leaving the
19 facility, and these violations were referred to CALRECYCLE's Waste Tire Enforcement
20 Section.

21 8. On or around January 9, 2013, Gerri Stryker, Supervisor of CalRecycle's Tire
22 Enforcement Section-Central Unit, and Keith Cambridge, Supervisor of CalRecycle's Tire
23 Hauler Compliance Unit had a phone conversation with Mr. Shuler. During the conversation,
24 Ms. Stryker discussed with Mr. Shuler the issues regarding the overage of waste tires at the
25 facility. Mr. Cambridge discussed with Mr. Shuler the issues regarding the improper
26 manifesting of waste/used tires by RESPONDENT. Ms. Stryker and Mr. Cambridge then
27 explained that RESPONDENT was not allowed to transport waste/used tires back to the facility
28

¹ A "Major Waste Tire Facility" is defined as, "a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded." (PRC section 42808(b).)

1 until RESPONDENT was under the waste tire authorized storage limit. Mr. Cambridge also
2 explained to RESPONDENT that RESPONDENT's manifest forms need to be complete when
3 they are submitted to CALRECYCLE, and that RESPONDENT had not submitted any manifest
4 forms showing waste tire deliveries to the facility. Mr. Shuler stated that all the waste/used tires
5 that were picked up by RESPONDENT were delivered to the facility, and that he was unaware
6 that he needed to document deliveries on the manifest forms. Mr. Cambridge instructed Mr.
7 Shuler how to properly complete a manifest form and advised Mr. Shuler that any and all
8 waste/used tires picked up or delivered must be manifested.

9 9. RESPONDENT has failed to manifest at least 283 loads of waste tires as
10 required by PRC section 42961.5 and Title 14 CCR sections 18459, 18460.2. On January 22,
11 2013, Mr. Cambridge conducted an audit of RESPONDENT's manifest forms for the time
12 period from July 1, 2012 through December 31, 2012. From this audit, Mr. Cambridge
13 determined that RESPONDENT failed to submit manifest forms for at least 283 separate loads
14 of waste tires delivered to the facility.²

15 10. RESPONDENT has failed to comply with the manifesting requirements set forth
16 in Title 14 CCR sections 18459, 18459.1, and 18460.2 for waste and used tire haulers, waste
17 and used tire generators, and waste and used tire end-use facilities. On January 30, 2013,
18 Inspector Weber and Inspectors Michael Payan and Cathy Blair of CALRECYCLE's Tire Hauler
19 Compliance Unit performed a follow-up inspection of the facility. As documented in Tire
20 Inspection Report Number IW-1004733, Inspectors Payan and Blair examined
21 RESPONDENT's CTL forms for the last three years to ensure compliance with manifesting
22 requirements. Inspectors Payan and Blair found that some of RESPONDENT's CTL forms
23 contained errors and omissions in several areas that included, but were not limited to,
24 RESPONDENT's failure to properly manifest pick-ups and deliveries of waste and used tires
25 from RESPONDENT to other facilities or from generators to RESPONDENT, and failure to
26

27 ² This information was determined by collecting data from all CTLs in CalRecycle's Waste Tire Management
28 System (WTMS) from pickups made by vehicles registered (by decal number) to RESPONDENT, determining
how many vehicles (by decal number) were used for said date, and counting at least one load per vehicle for that
date. The results were compiled into a table, by load date, which indicates the 283 separate loads of waste tires
delivered to the facility that were not properly manifested.

1 accurately complete information on CTL forms indicating the load type, i.e. weight in tons or
2 whole tire counts. Inspectors Payan and Blair instructed Mr. Shuler how to properly complete
3 the CTL form to accurately reflect pickups and deliveries of all waste and used tires. During
4 this inspection, Inspectors Payan and Blair also observed that RESPONDENT's TPID
5 certificate was not posted in a conspicuous place, as required by Title 14 CCR section
6 18459.1.

7 11. As documented in SWIS Inspection Report No. 50-AA-0012, dated January 30,
8 2013, Inspector Weber's inspection of the facility revealed that all waste tires that were
9 previously observed during the December 10, 2012 inspection (approximately 35,000) had
10 been removed from the facility. According to statements made by Mr. Shuler to the Inspectors,
11 the waste tires had been removed from the facility and delivered to Forward Landfill, located in
12 Stockton, CA, using RESPONDENT's vehicles. Inspectors reviewed the CTL forms provided
13 by RESPONDENT showing the deliveries to Forward Landfill and found that the CTL forms
14 failed to show the pick-ups from RESPONDENT. Inspector Blair informed Mr. Shuler that a
15 CTL form is required to show pick-ups from the facility for every delivery to another location.
16 Additionally, Inspectors Payan and Blair informed Mr. Shuler of the requirements set forth in
17 Title 14 CCR sections 18461(b) and 18462(c), to use CalRecycle Form 204, *Unregistered*
18 *Hauler & Comprehensive Trip Log Substitution Form*, any time unregistered haulers make
19 deliveries of waste or used tires to RESPONDENT.

20 12. On April 5, 2013, Mr. Cambridge performed an audit of RESPONDENT's CTL
21 forms to verify RESPONDENT's compliance with the manifesting requirements set forth in
22 PRC section 42961.5 and Title 14 CCR sections 18449 et seq. Mr. Cambridge found that
23 during the time period from January 30, 2013 to April 5, 2013, RESPONDENT submitted
24 seven CTL forms; two of the seven CTL forms contained errors or omissions, equating to a
25 29% error rate. Even after repeated instruction from CALRECYCLE staff explaining how to
26 properly complete CTL forms, an audit of RESPONDENT's CTL forms verified continued non-
27 compliance with manifesting requirements.

1 **ALLEGATIONS OF SPECIFIC VIOLATIONS**

2 14. CALRECYCLE is requesting the sum of \$142,500.00 in waste tire hauler
3 administrative penalties, pursuant to PRC section 42962(c), based on the above-mentioned
4 facts and for the following violations as more specifically set forth in the foregoing paragraphs:

- 5 a. RESPONDENT is in violation of PRC section 42961.5, which requires a
6 generator of waste or used tires, a waste or used tire hauler, or the
7 operator of a waste facility to complete a manifest form that contains all of
8 the information, including, but not limited to, "an accurate measurement of
9 the number of tires being shipped, the type or types of the tires, the date
10 the shipment originated, and the origin and intended final destination of
11 the shipment." RESPONDENT failed to manifest at least 283 loads of
12 waste/used tires and failed to provide accurate information in its manifest
13 forms.
- 14 b. RESPONDENT is in violation of Title 14 CCR section 18459 and 18460.2,
15 which requires a hauler "shall complete a new Manifest Form for each
16 pick-up or delivery of any used or waste tires in accordance with the
17 directions on the form." RESPONDENT failed to complete a new manifest
18 form for each pick-up and delivery of waste or used tires to and from the
19 facility.
- 20 c. RESPONDENT is in violation of Title 14 CCR section 18459.1, which
21 requires that a TPID certificate "shall be posted by the operator in a
22 conspicuous place." RESPONDENT failed to post its TPID certificate in a
23 conspicuous place.

24 **PENALTIES**

25 15. CALRECYCLE's authority to assess administrative penalties against
26 RESPONDENT as a waste and used tire hauler is set forth in PRC section 42962(c) and Title
27 14 CCR section 18463. Pursuant to PRC section 42962(c):

28 ///

1 In addition to the civil penalty that may be imposed pursuant to subdivision
2 (a), the board [CALRECYCLE] may impose civil penalties administratively
3 in an amount not to exceed five thousand dollars (\$5,000) for each violation
4 of a separate provision or for continuing violations for each day that
5 violation continues, on any person who intentionally or negligently violates
any permit, rule, regulation, standard, or requirement issued adopted
pursuant to this chapter. . .

6 Title 14 CCR Section 18463, provides in relevant part:

7 Any waste tire generator, end-use facility, or waste tire hauler, or any party
8 or person who commits any of the following acts shall be liable for a civil
penalty:

- 9 (a) Intentionally, or negligently violates any permit, rule, regulation, standard, or
10 requirement pursuant to Chapter 19 of the Public Resources Code relating to the
11 generation, transportation or disposal of used or waste tires.
- 12 (b) The aiding or abetting, or allowing of any violation, or noncompliance with any
13 permit, rule, regulation, standard, or requirement pursuant to Chapter 19 of the
14 Public Resources Code relating to the generation, transportation or disposals of
used or waste tires.
- 15 (c) Any violation of, or noncompliance with any order issued by the Department or by
16 a hearing officer or a court relating to the generation, transportation or disposal of
used or waste tires.
- 17 (d) Any false statement, misrepresentation, or omission of a significant fact or other
18 required information in the application for a waste tire hauler registration,
19 Manifest Form, Unregistered Hauler & Comprehensive Trip Log Substitution
20 Form, or in information regarding these matters subsequently reported to the
Department.

21 Furthermore, Title 14 CCR section 18464 allows CALRECYCLE to impose
22 administrative penalties in accordance with the penalty table therein.

23 16. As required by Title 14 CCR section 18465, in determining an appropriate
24 administrative penalty for RESPONDENT, CALRECYCLE has taken into consideration the
25 following factors:

- 26 (1) The nature, circumstances, extent, and gravity of the violation.
27 (2) Evidence that the violation was willful or negligent.
28 (3) The good or bad faith exhibited by the party.

- 1 (4) History of violation of the same or similar nature.
2 (5) The extent to which the party has cooperated with the Board in remediating
3 the violation.
4 (6) The extent that the party has mitigated or attempted to mitigate any damage
5 or injury caused by his or her violation.
6 (7) Evidence of any financial gain resulting from the violation.
7 (8) Such other matters as justice may require.

8 17. Accordingly, CALRECYCLE hereby requests that a waste tire hauler
9 administrative penalty be assessed against RESPONDENT in the sum of \$142,500.00.

10
11 **RIGHT TO HEARING**

12 You are hereby notified that pursuant to the provisions of PRC section 42961.1, Title 14
13 CCR section 18466, and Government Code section 11505 that you are entitled to a hearing to
14 refute the allegations against you contained in this ADMINISTRATIVE COMPLAINT FOR
15 WASTE TIRE HAULER ADMINISTRATIVE PENALTIES. **If you wish to have a hearing on**
16 **this matter, you must complete and return the enclosed REQUEST FOR HEARING/**
17 **NOTICE OF DEFENSE to our Legal Office within 15 days of receipt of this Administrative**
18 **Complaint. Failure to complete and return the REQUEST FOR HEARING/NOTICE OF**
19 **DEFENSE within 15 days will be deemed a waiver of your right to a hearing.**

20 Pursuant to the above referenced Public Resources Code and Government Code
21 sections, discovery requests by any party must be made within 30 days after the service of this
22 ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE
23 PENALTIES.

24
25 Dated this 29th day of July, 2013.

26
27
28

MARTHA PEREZ
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

**REQUEST FOR A HEARING/NOTICE OF
DEFENSE**

AGENCY NO: _____ - _____ -ADC

TPID NO: _____

RESPONDENTS.

I, _____, in the above-entitled proceeding, acknowledge receipt of a
copy of the _____
(Fill in full title of Statement of Issues or Administrative Complaint [Accusation].)

I hereby:

() Request a hearing.

The basis for my request is the following:

Further, I hereby:

- () Object to the Accusation for failure to state acts or omissions upon which the agency may proceed.
- () Object to the form of the Accusation in that the transaction cannot be identified or a defense prepared.
- () Present new matter by way of defense.

- 1 () Admit the Accusation in whole or in part.
2 () Object to the Accusation on the basis that compliance with the requirements of a
3 regulation would result in a material violation of a regulation enacted by another
4 department affecting substantive rights.

5 All correspondence concerning this proceeding should be sent to Respondent at the
6 following address:

7 (If you are represented by an attorney, all correspondence concerning this matter will be sent
8 to the attorney.)

9 Address: _____

10 City: _____

State: _____

Zip Code: _____

11 Telephone: _____

Email: _____

12 ☐ I hereby agree to accept service of all correspondence by email.

13 Signature: _____

14 Date: _____

15 Please send to:

16 CalRecycle Legal Office
17 Attention: Gloria Bell
18 P.O. Box 4025, MS 24-B
19 Sacramento, CA 95812-4125
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DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

RIGHT TO A HEARING

You are hereby notified that that you are entitled to request a hearing to refute the allegations against you contained in the ADMINISTRATIVE COMPLAINT FOR WASTE TIRE HAULER ADMINISTRATIVE PENALTIES (Administrative Complaint). The enclosed REQUEST FOR HEARING/NOTICE OF DEFENSE form (Notice of Defense), when signed by or on behalf of the Respondent and returned to the Department of Resources Recycling and Recovery (CalRecycle) within 15 days of receipt of the Administrative Complaint, will acknowledge service of the Administrative Complaint and constitute a notice of defense. **If you wish to have a hearing on this matter, you must complete and return the enclosed Notice of Defense to the address indicated on the form within 15 days of receipt of the Administrative Complaint. Failure to complete and return the Notice of Defense within 15 days will be deemed a waiver of your right to a hearing.**

If you request one, a hearing will be conducted before a Hearing Officer, a CalRecycle employee that does not work on or advise the tire programs, at one of our offices or other locations throughout the State, upon the charges made in the Administrative Complaint.

Please refer to the attached document entitled "Representing Yourself in a CalRecycle Tire Hearing" for further guidance on hearing procedures and basic information on representing yourself at a CalRecycle tire hearing.



1. You are entitled to review the evidence being used against you and request a list of witnesses by applying to CalRecycle's attorney.
2. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.
3. You are entitled, upon request, to be provided with the assistance of an interpreter, if you or your witnesses do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to CalRecycle's Hearing Clerk, so appropriate arrangements can be made. Generally, the cost is paid by the party requesting an interpreter, however, the Hearing Officer may order CalRecycle to pay if you cannot.
4. You are hereby notified that, pursuant to the provisions of 14 CCR section 17050 et seq., the violations alleged against you may cause you to be placed on CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from CalRecycle for up to three years.
5. Continuances are not favored. If you need a continuance, immediately submit a written request to Hearing Clerk- TIR, CalRecycle Legal Office, 801 K Street, MS 19-03, Sacramento, California 95814, by fax to 916-322-8768, or by e-mail to HearingClerk.TIR@CalRecycle.ca.gov. Your written request for a continuance will be forwarded to the Hearing Officer for decision. Requests without good cause will be denied.



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CALIFORNIA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

Representing Yourself in a CalRecycle Tire Hearing

CalRecycle is providing this information to help you prepare for your administrative hearing. This information is not a substitute for having an attorney. We hope this information will help you better understand the process and prepare for the hearing.

How Do I Request A Hearing?

You have received this because you have been served with either a Statement of Issues or Administrative Complaint (Accusation) issued by the Waste Permitting, Compliance, and Mitigation Division of the Department of Resources Recycling and Recovery (CalRecycle). You may request a hearing to have a Hearing Officer hear your side of the matter before your permit or registration is denied, suspended or revoked, or before penalties are assessed against you. If you do not request a hearing, a Default Decision will be issued ordering the denial, suspension, or revocation of your permit or registration or ordering you to pay the penalty amount requested in the Accusation. If you wish to request a hearing, you must complete and send the Request For Hearing / Notice Of Defense to the address designated on that form. On that form you must state the reason you are requesting a hearing. You must provide enough information for CalRecycle to understand the facts, defenses, and other issues you hope to have addressed at the hearing.

What Will My Hearing Be Like?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. A Hearing Officer will preside under a delegation of authority from CalRecycle's director. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. However, an attorney may be better able to present your side.

When the hearing begins, each side may present an opening statement. This tells the Hearing Officer what that side intends to prove. Each side can then offer relevant evidence to prove its case.

Evidence can be testimony taken under oath at the hearing or it can be certain kinds of documents, such as business records. You must prove that the documents you submit are authentic. This means that you must be able to show that a document actually is what you say it is; usually this is accomplished through witness testimony.

CalRecycle usually presents its evidence first. CalRecycle's attorney will ask its witness questions (direct examination). When the attorney is finished, it will be your turn to ask questions of that witness (cross-examination). CalRecycle's attorney will have a second chance to ask questions (redirect) and then you will have a second chance (recross).

After CalRecycle has presented its witnesses, it will be your turn. You may make a statement yourself and call your witnesses. As you finish with each of your witnesses (and your testimony), the CalRecycle attorney will cross-examine. As stated before, you will have a second chance to ask questions of each witness. Even if you choose not to testify, CalRecycle's attorney may cross-examine you.

After you have presented your case, CalRecycle may call rebuttal witnesses. Rebuttal witnesses may only testify to issues you brought up in your case. If CalRecycle calls rebuttal witnesses, you may be allowed to call additional witnesses to address the issues discussed by rebuttal witnesses. Few hearings involve rebuttal witnesses.

Remember: Before the hearing closes, you must submit all the evidence you want the Hearing Officer to consider.

After all testimony has been heard, each side can make a closing argument. Usually CalRecycle goes first; you go next. The party that goes first has the opportunity to make the last comments.

Closing argument is your chance to sum up the evidence and tell the Hearing Officer why you should prevail in your case. It can address only those facts brought out in testimony of witnesses or in documents received into evidence. In some cases, the Hearing Officer may want the parties to submit written, instead of oral, argument. If so, a schedule will be set up for the written arguments.

What Do I Need To Prove?

If a license, permit or registration for which you applied is being denied, the burden is on you to prove your side. You must prove you meet the qualifications for the license, permit or registration.

If you already have a license, permit or registration against which CalRecycle is imposing discipline, CalRecycle has the burden of proof. This means that CalRecycle must establish that you violated the laws or regulations charged in the Accusation or Statement of Issues.

Even when CalRecycle has the burden of proof, you should prepare to offer evidence of your good character and conduct, mitigation, rehabilitation and evidence refuting the charges, as appropriate.

May I See CalRecycle's Evidence Against Me?

CalRecycle's evidence is also called discovery. You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you to mount a defense against them. A Request For Discovery form is available on CalRecycle's website, or may be obtained by contacting CalRecycle's attorney or Hearing Clerk. Simply send the completed Request for Discovery to CalRecycle's attorney if you wish to obtain a copy of the investigative files and any other documents or relevant information CalRecycle has regarding your case. You may have to pay for copies. You also have a right to receive a witness list.

Generally, you must request "discovery" within 30 days of receiving the initial Accusation or Statement of Issues, or within 15 days of any supplemental Accusations or Statements of Issues. In some cases, these times may be shorter. Be sure to read the documents you receive to verify the time you have to request discovery.

CalRecycle has the same rights to get information from you. You may also be served with, or have included in the paperwork received already, a Request For Discovery on behalf of CalRecycle. You must make copies of the requested information available to CalRecycle by the date stated in the Request for Discovery.

What Kind of Evidence Will I Need For the Hearing?

Depending on your case, you may want to bring witnesses who know about the issues involved with the charges against you. If there are documents, such as contracts, business records or checks that help prove your side, try to bring the original and three copies. You may bring photographs or other items that are relevant to your defense. Items you want to be considered must be left with the Hearing Officer. Generally, you may substitute copies of those items in place of the originals.

Documents and photographs must be authenticated. This is typically done through witness testimony, during which your witness, or yourself, if you choose to testify, will need to explain to the Hearing Officer what the document is, how the witness reliably knows what it is, and how it is relevant to your case.

How Do I Get Records From a Business?

If you are a party to a hearing, you have the right to subpoena from individuals, businesses and government agencies relevant records or other things to be produced at the hearing. CalRecycle has a subpoena form available for download on its website, and a copy may also be mailed or emailed to you upon request. You must arrange to pay any required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

How Do I Get a Witness to Come to the Hearing?

A witness can come voluntarily to the hearing. However, a subpoena protects your right to have that person present. You may obtain the subpoena form by downloading it from CalRecycle's website, or by requesting that a copy be mailed or emailed to you. You must use the subpoena to compel the attendance of persons whose testimony is relevant to your case, unless that person agrees to appear voluntarily on your behalf. Witnesses are entitled to paid reimbursement of their time. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10. You must arrange to pay required fees and have someone else serve the subpoenas. Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

Is It OK to Bring Letters Instead of Witnesses?

Some letters and other documents may be admitted in evidence for limited purposes, but generally it is better to bring witnesses who can help present your side of the case and answer any questions raised. The Hearing Officer will not speak with witnesses, except at the hearing itself. If you do choose to offer letters, declarations or other documents, make sure you understand what you must do to get them admitted in evidence. (For instance, see the discussion on authenticating documents above.)

Remember: This hearing is your chance to tell the Hearing Officer your side. It is important to have your witnesses present at the hearing to testify.

If I Forget Something, Can I Send It Later to the Hearing Officer?

Your chance to present evidence is at the hearing. Only in rare cases will the Hearing Officer allow you to send evidence later.

Is There a Way To Settle This Without a Hearing?

Cases often settle without going to hearing. Contact the CalRecycle attorney to see if you can work something out.

What If I Can't Be There On The Day Set?

You must show good cause to change a hearing date. If you cannot attend on the date and at the time shown, you must contact CalRecycle as soon as you know of the problem. To request a change of date, you must file a written request with the Hearing Clerk in CalRecycle's Legal Office, with a copy to CalRecycle's attorney, explaining the reasons for the change. The sooner you make your request, the more likely it will be granted.

Remember: You must file a timely Notice of Defense in order to have a hearing.

Where Will The Hearing Take Place?

Hearings are scheduled at the CalRecycle office located closest to your residence or the location at which the transactions or events providing the basis for the Accusation or Statement of Issues occurred. CalRecycle's office locations are in Sacramento, Los Angeles, Riverside and San Diego. In some circumstances, CalRecycle may conduct a hearing at a location other than a CalRecycle office. If you feel that a different location would work better for you please contact CalRecycle's Hearing Clerk as early as possible to request a location change. CalRecycle reserves the right to deny the request upon consideration of issues including, without being limited to, the ability of CalRecycle staff and the Hearing Officer to travel to the location, and any fees that may be incurred for travel plans already made by CalRecycle staff, the Hearing Officer, and CalRecycle's witnesses.

What If I Don't Attend?

If you request a hearing and do not attend the hearing, CalRecycle can still proceed with the case against you. (If you do not request a hearing, CalRecycle will issue a Default Decision against you.)

What If I Need An Interpreter?

If you or a witness need a sign or language interpreter, immediately contact the CalRecycle attorney or Hearing Clerk so that a certified interpreter can be provided. Normally, it is not sufficient to bring a friend or relative to interpret for you.

Will The Hearing Location Be Accessible To People With Disabilities?

Hearing locations are to be accessible to persons with disabilities. However, check in advance with CalRecycle's Hearing Clerk to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, please contact CalRecycle's Hearing Clerk as soon as possible, so arrangements can be made.

What Is The Contact Information For CalRecycle's Hearing Clerk?

All tire hearing papers must be filed with the Hearing Clerk in CalRecycle's Legal Office at the street address, fax number or email address below.

Hearing Clerk- TIR
CalRecycle Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
916-327-0089
916-322-8768 FAX
HearingClerk.TIR@CalRecycle.ca.gov



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

801 K STREET, MS 19-03, SACRAMENTO, CALIFORNIA 95814 • (916) 327-0089 • WWW.CALRECYCLE.CA.GOV

CalRecycle Tire Hearing Subpoena Information

CalRecycle Tire Hearing Subpoenas cannot be used in CalRecycle Division of Recycling hearings.

Can I subpoena witnesses to testify at the hearing?

Subpoenas may be issued to require witnesses to attend and testify at CalRecycle tire hearings. Witnesses are entitled to payment for their time and travel. Please see "I have received a subpoena to be a witness in a case. Can I be paid?" below.

I want to receive copies of records held by someone else for my administrative hearing. How do I get them?

You are entitled to request discovery of the information CalRecycle has to prove the charges made against you or enable you mount a defense against them. Please see *Representing Yourself in a CalRecycle Tire Hearing* for more information.

You may also subpoena records from individuals, businesses, and government agencies to be produced at your hearing. A subpoena duces tecum means "bring with you under penalty of law" and compels the party served to bring records that they have to the hearing and to verify that the documents or records have not been altered. That may be done by declaration or by direct testimony, as you require.

The form on the internet is not signed. Can I sign it?

Only CalRecycle Hearing Officers or attorneys licensed in California acting on behalf of a party may sign a subpoena. If you are proceeding without an attorney, contact CalRecycle's Hearing Clerk to obtain a blank subpoena form signed by a Hearing Officer.

Hearing Clerk- TIR
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What laws should I look at before sending a subpoena or a subpoena duces tecum?

Code of Civil Procedure sections 1985-1987

Government Code sections 11450.05-11450.50, 68092.5-68093, and 68096.1-68097.10.

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I have received a subpoena to be a witness in a case. Can I be paid?

Yes, according to Government Code Sections 11450.05 and 11450.50, you may request witness fees and mileage actually traveled both ways. You may request payment in advance of the hearing from the party at whose request the subpoena or subpoena duces tecum is issued, which appears in item 1 of the CalRecycle Tire Hearing Subpoena form. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.

Name: _____

Address: _____

Telephone: _____

Fax (optional): _____

Email (optional): _____

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:)	REQUEST FOR DISCOVERY
_____)	
_____)	(Government Code Section 11507.6)
_____)	RESOURCES CODE SECTION 42960
)	
TPID NO: _____)	AGENCY NO: ____-____-____
_____)	

TO: The Department of Resources Recycling & Recovery ("CALRECYCLE"), under Government Code Section 11507.6, I, _____ request the following:

1. The names and addresses of all witnesses to the extent known by you, including, but not limited to, those you intend to call to testify at the hearing, and
2. An opportunity to inspect and copy all of the following matters under Government Code Section 11507.6(a)-(f) that are in your possession, custody or control:
 - (a) A statement of any person, or regarding any entity named in the initial pleading when it is claimed in the pleading that any respondent's act or omission regarding this person or entity is the basis for this administrative proceeding;
 - (b) A statement pertaining to the subject matter of the pleading made by any party to another party or person;

(c) Statements of witnesses proposed to be called to testify and of other persons having personal knowledge of the acts, omissions, or events that are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including but not limited to reports and things that you propose to offer in evidence;

(e) Any other writing or thing that is relevant and would be admissible in evidence.

(f) Investigative reports made by or on behalf of you or any other party pertaining to the subject matter of the proceedings, to the extent that these reports:

(1) Contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the proceedings, or

(2) Reflect matters perceived by the investigator in the course of his or her investigation, or

(3) Contain or include by attachment any statement or writing described in (a) to (e) above, or a summary thereof.

3. This request is not intended to require inspection, copying or production of any writing which is privileged from disclosure by law or protected as attorney's work product.

4. This is a continuing request for discovery of any of the above stated matters that may come into your possession at any time before the hearing.

Specifically, in response to the discovery requested above, pursuant to Government Code 11507.6, I request the following evidence relevant to this matter:

Signature: _____

Date: _____

Please send completed form to:

**CalRecycle Legal Office
Attention: Gloria Bell
P.O. Box 4025, MS 24B
Sacramento, Ca 95812-4125**